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Davis, McGrath & Kiebling, Architects.

FORTY-SEVENTH ANNUAL CONVENTION OF
AMERICAN INSTITUTE OF ARCHITECTS,
NEW ORLEANS, LA., DECEMBER 2, 3, 4, 1913.

THE Executive Committee of the American Institute of Architects has selected December 2, 3, 4, 1913, as the time, and New Orleans, La., the place for the next convention.

The Grunewald Hotel has been selected as the headquarters for the Institute. It will be necessary for members, intending to attend, to secure accommodations in advance.

Delegates who have been elected, and other members who expect to attend the convention, will meet December 2 at the Grunewald Hotel at 9 a. m.

The principal topic to be considered by the convention will be the enactment of a law, by which the government may secure men of the greatest ability in the architectural work of the United States.

On the night of the 4th a formal dinner will be given by the Institute at which prominent men interested in the Fine Arts will be invited to attend.

MONTEFIORE HOME FOR CHRONIC INVALIDS,
NEW YORK.

ARNOLD W. BRUNNER AND RUCHMAN & FOX, ARCHITECTS.
PLATES CI-CHII.

THIS group of buildings is one to which, of course, larger space should have been assigned than is possible within the limits of New York City, but more intelligent distribution in a comparatively small area allowed for these buildings could hardly be found. It comprises the Administration Building, the Synagogue, the East, South, West and Central Pavilions, the dining room, kitchen and servants' buildings. All are built of brick and architectural terra cotta. The group plan will interest, not alone such architects as are concerned with hospital groups, but those as well who can appreciate a group which though restricted in area is nowhere congested.

The style selected is perhaps the most satisfactory which could be employed for an institution of this character. In other words, it is perhaps the least "institutional" possible of adaptation to such a large group, and while the buildings do not all appear to be of equal design, there is none of them that is not well up to the average of such work, and two of them at least, the Administration Building and the long two-story portion of the hospital group, are especially good. It is to this two-story building specially that the writer feels attention should be directed; the average hospital is too often a cold and barren place which may be thoroughly sanitary, well adapted to its purposes from an administrative point of view, but certainly by no means an agreeable place for the convalescent, nor for the chronic class, to which this hospital is devoted. One desires something of a more friendly spirit, less suggestive of confinement and of suffering, and while we can secure completely homelike surroundings in no building of such tremendous size, at least an approximation thereto can be, and in the case of this low building has very successfully been, made.

MASON LIBRARY, GREAT BARRINGTON, MASS.

BLANCHARD & BARNES, ARCHITECTS.

PLATES XCVII-C.

IT is very seldom that a building comes before us which can be so unsparingly praised as this library at Great Barrington. It is perhaps not too much to say that this is the most attractive small library building in America, both because of its intrinsic beauty, and because of thorough suitability to its location. Great Barrington is one of the historic towns of New England, and while it has of later years had a number of offices and semi-public buildings erected of characterless stone work, there are still preserved in it a number of the old buildings of excellent Colonial taste, and the architects have therefore conformed their building to this most agreeable style. Many architects during the past summer have watched its construction with interest, and their feeling has been unanimous in the matter that the building has but one single fault, and this of trivial importance; the garlands over the windows are in too high relief for the balance of the design. Both the entrance door and the secondary entrance door to the cellar are exquisitely designed, the mass of the exterior is admirable, and the interiors of exquisite loveliness. The most interesting part of the interior is the manner in which the stack room opens into the reading room, a matter that would have appeared difficult to reconcile the lightness and grace of Colonial detail with the apparent weight of the coffered ceiling. The photographs show better than any description how successfully this has been done.

The officials of the library are especially to be congratulated on the good taste displayed by those who made the selections of the furniture, lighting fixtures, etc., and one sees that the architects had something, at least to do with it, but the mere permission to the architects to select accessories of good character is something which the average board has not the intelligence to grant. The building is a veritable chef d'oeuvre, the most exquisitely complete piece of architectural design which has appeared in a long time, and it is an interesting commentary upon the taste of the public that the writer was asked a half dozen times, on various visits to Great Barrington, for his opinion on the library by the inhabitants of the town, who experienced great surprise at discovering that what they thought looked like a plain brick box could be regarded by anyone as an attractive structure. However, since its completion the sentiment of the town has changed. American architects who have opportunity in such buildings as these to educate the public taste and do not take advantage of opportunities are much to be condemned. In a big city where there is constant competition in good taste it is not difficult to gradually educate the public to a standard sufficiently high, but in the smaller towns and cities, especially in those where the recent buildings of any importance and expense have been badly executed, there is no function more valuable than the construction of a building, be it an office, a store, a library, or even a residence, which will offer a distinctive standard of comparison and be in itself a canon of architectural excellence.



STREET FRONT, HOUSE, CLARENCE BONYNGE, SO. ORANGE, N. J.

Davis, McGrath & Kiesling, Architects.

OFFICES, W. R. GRACE, NEW YORK.

D'OENCH & YOST AND J. W. O'CONNOR, ARCHITECTS.

PLATES CIV-CV.

THIS is a building of a height not too great to permit of a design with some reasonable approximation in appearance to a masonry structure, and the architects designed the building along the familiar lines of the Italian school as modified to suit modern conditions and needs. Perhaps the best feature of the design is a sense that a serious difficulty has been so completely overcome that one hardly realizes it was a difficulty, is the way in which large and numerous windows have been introduced without destroying what was really the essence of the Italian feeling, the sense of stability of the structure. Most of our American office buildings of pseudo-Italian style are well detailed, oftentimes decorated with flat ornament, little, if any, inferior to the old Italian work, but the ornamental parts of the Italian buildings were after all only ornaments, and their beauty was derived rather from the splendid wall surface and interesting fenestration than from superficial characteristics. Therefore when modern architects have endeavored to use the Italian palace motive in the modern office building, the result has been unsuccessful from the sheer inability of the designers to reconcile the Italian detail with a mass which one expects to find almost a solid, and actually finds full of openings.

The success of the architects in this particular case is due, not alone to intelligent and considerate handling of the antique motives, but also to the proportion of the height of the building, to its breadth and width, which is really not very far from that which we have learned to expect; and the same architects using the same motive might conceivably fail completely on a building of greater height and less width, although there are very few buildings in this style and of this proportion which are anything like so good as this one. The architects were fortunate also in having the co-operation of such a reliable building firm as the Whitney Company of New York.

The interior presented is of a most charming simplicity, elegant rather than magnificent, and worthy to be ranked with some of our best bank interiors. One cannot, of course, find any new or original motives or methods, but for a graceful and satisfactory development of the traditional ones, the architects are greatly to be commended.

THE BOOTH AND THE SHUBERT THEATRES.

HENRY B. HERTS, ARCHITECT.

PLATES CVI-CIX.

WHEN Messrs. Herts & Tallant designed the New Amsterdam Theatre and the Brooklyn Academy of Music in brick and terra cotta, they apparently did for theatres what York & Sawyer have done for banks, in both cases creating an era. The instant and universal acceptance of both type of design and materials employed in these two structures by the architects of subsequent buildings of the same class all over the country must be due to something more than the establishment of good precedent; there must be something which appeals to the untrained as well as to the trained mind as logical in both the type and materials. Take the bank, for instance, one can think of no real reason why a temple of money changers should be like a Roman

temple, but one instinctively feels that a plain and simple Classic design executed in substantial materials denotes a bank, just as the combination of brick and vari-colored terra cotta treated in a free variation of Classic with a suggestion of Art Nouveau well expresses the gaiety and lightness of a theatre. This latter sentiment seems to be confined to this country; the most recent of the French theatres, the Champs Elysées, is of heavily veined marble with sculptural ornament sparingly introduced, and is of a generally funereal appearance, resembling at least to the American eye much more the Bismarck memorial in Germany than a real theatre. In London The Gaiety Theatre is built of a sombre colored stone like most of the rest of London, and if its Classic is free enough it is not the sort of freedom which suggests gaiety, probably because the scale of the ornament is so tremendous that the effect of the whole building is rather institutional than theatrical. After all, the Gaiety does seem to be a British institution, if one may judge from the report printed in the newspapers as to the number of Peeresses which have emerged from its walls.

The Shubert and Booth theatres, however, are of the true theatrical description. Their architect has discovered an excellent motive for a single facade, and has been content to use it without serious modification in both buildings, but as the two constitute practically a single structure, there seems to be no good reason why this should not be done, although a somewhat more different treatment of the two facades would perhaps have been more amusing. The most interesting part of the work from the point of view of material is the lavish use of sgraffito, an art which three years ago had no practical being in this country, but which has been extensively employed during these last years. It is certainly effective, but will be worth watching to see how it stands in our climate.

Both theatres are broad and shallow, the interior of the Booth Theatre is unusually good in design, tasteful, quiet and charming, while the Shubert Theatre, although not of such exceptional excellence, is nevertheless good of the more accepted theatre interior design. The features heretofore spoken of might with propriety apply to any one of numerous other buildings in New York, but the thing which is mainly interesting is the arrangement of the group plan of the two. The New York fire laws on theatres have become every year more stringent, until one can hardly imagine a structural improvement in the matter of safety which could be made. The passage of the ruling regarding alley ways at the sides of the auditorium, so long and bitterly contested by the theatre owners, has been accepted by the owners of these two and developed in a most interesting manner. He has made one of his alleys wide enough for carriage entrance and has carried his facades around the four sides of the building, thus freeing the exits in the best possible way, and immensely adding to the dignity and interest of this very unique group.

THE CRAFTSMAN AND THE ARCHITECT.

THE American architect is handicapped almost fatally by the lack of good artificers to work out the detail of his plans, according to Ralph Adams Cram, consulting architect of St. John's Cathedral. The blame is placed by Mr. Cram largely upon our school system, which does not educate craftsmen, and upon labor unions that discourage

(Continued page 261)



LIVING ROOM, HOUSE, CLARENCE BONYNGE, SO. ORANGE, N. J.

Davis, McGrath & Kiesling, Architects.

(Continued from page 259)

the spirit of emulation. Mr. Cram's views are expressed in a paper which was read by him before the Fourth Annual Convention of the American Federation of Arts, which is reprinted in the October number of *Art and Progress*.

When good work is wanted in wood-carving, metal work, and similar arts, Mr. Cram says, it is necessary to go abroad for it, or to employ foreign-trained men. Mr. Cram tells of a member of the Committee of Education of the American Institute of Architects, who was asked to give a list of artist-craftsmen competent in design and execution and willing to work with due regard to the architectural environment of their products. His report was that there were two Americans who were doing well as beginners in stained glass, but that it would be safer to go to England, where the ancient tradition in design and workmanship still maintains in a measure. He named two good sculptors in wood, one a Bavarian, one a German; one admirable iron-worker, a German; one goldsmith, an Englishman and two architectural sculptors, one a Welshman, the other an American.

"Apart from the industrial arts in their relation to architecture," says Mr. Cram, "their importance in this country, where art manufactures or art products are so enormously in demand, is too obvious to need demonstration. Nearly all our expert labor in the artistic trades is imported from Europe. We pay large wages to foreign workmen, but refuse to educate our own people so that this financial benefit may accrue to them. In other words, our prosperity results in benefitting the alien, and we allow our citizens to degenerate, furnishing no new employment for the rising generation, but fitting it only to those limited callings which already are overstocked, and in which it can command but a minimum wage.

"Every architect knows that the success or failure of his work depends largely on the craftsmen who carry it out and complete it with all the decorative features of form and color, and yet in a nation of 100,000,000 people, with a dozen schools of architecture, practically nothing is done toward educating these same craftsmen, and we either secure the services of foreign-trained men, accept tenth-rate native work, or go without.

"Take a case in point; it is decided to build a metropolitan cathedral with little regard to cost; plans are made (we will say satisfactorily), what then? If it is to be a great and comprehensive work of art it needs (and exactly as much as it needs its architect) sculptors, painters, carvers in wood and stone, glass-makers, mosaicists, embroiderers, leather workers. Are there enough schools in America to train all the craftsmen needed on this one monument, is there one school, and, if so, where?

"One of the foolish arguments against Gothic is that it is quite dependent on the artist-craftsman, and as we have none, we must abandon the style; one of the foolish arguments in favor of classical design is that anybody can learn to carve an acanthus, therefore we had better stick to what we know we can do. Neither argument is sound; if we have no artist-craftsmen then it would be better for us to close up half the schools that are turning out architects and employ the funds for the training of the only men who can give life to the architect's designs."

Mr. Cram says that in the good old days every bit of sculpture, painting, carving, metal work, joinery and glass

and needle work, enhanced the architecture, glorified it and sometimes redeemed it as well.

"Now," he continues, "either our carving is butchered, our sculpture and painting conceived on lines that deny their architectural setting, our metal work turned out by the commercial ton, our stained-glass work defiant of every law of God, man or architect, or it is all reduced to a dead level of technical plausibility, without an atom of feeling or artistry—and we are glad to take it this way for the sake of escaping worse."

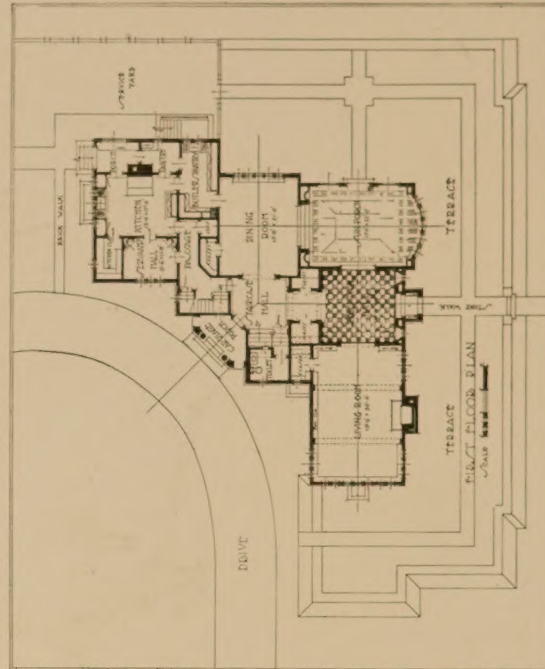
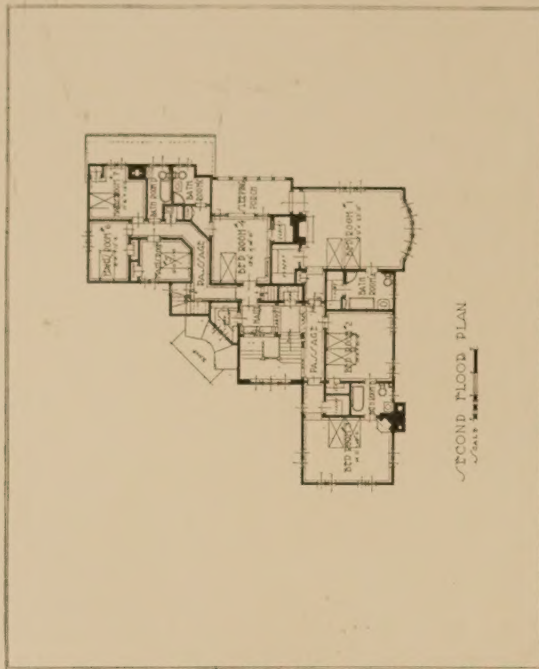
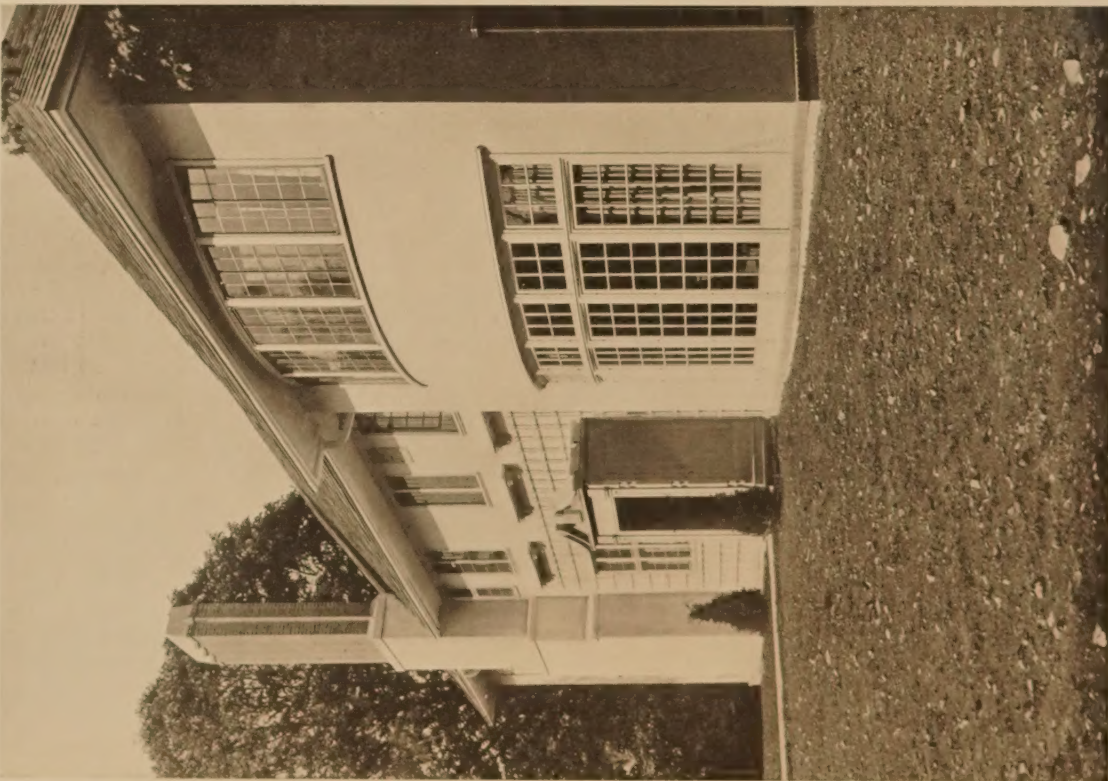
And all this, says Mr. Cram, is at a time when there are as many practicing architects in the directory of a great city as all Europe numbered during the whole epoch of mediævalism.

"How is it," asks Mr. Cram, "that in spite of these notable advantages we cannot succeed in matching a minor Greek temple, a second-class mediæval monastery, or a provincial Buddhist shrine of twelfth century Japan? There are, I think, three reasons: the first two do not concern us at this moment, the third very much does. I name the two first, for nobody can stop me—our abandonment of definite and concrete and inspiring religious conviction and our disregard of the sound principles of law and order and obedience. The third is precisely that which is the subject of this paper, the disappearance of the individual, independent and self-respecting craftsman, and by this third loss we are left helpless and hopeless, indeed."

All the wealth and the artists and architects in the world, Mr. Cram says, could not rival to-day or equal the Capella Palatina in Palermo, which was merely the chapel of a second-rate Prince in a frontier land in the dusk of the Dark Ages. The basic reason, he says, is the substitution during and after the Renaissance, in place of a communism that developed true personality, an individualism that destroyed personality. The triumphant individuality of the Renaissance, he says, hardened into an economic system that through mechanics, capitalism, and division of labor has become a very sordid kind of slavery.

There are, nevertheless, real craftsmen living to-day, Mr. Cram says, turning out exquisite work after the old fashion. "I know," he continues, "three makers of tiles and other products of burnt clay and glazes, who are consummate artists (one of them is a woman) and who are to be dealt with only as individuals, and who, if they are treated as allies, not as commercial purveyors of trade goods, can glorify any building with which they come in contact; I know two workers in wrought iron who are blood brothers of Adam Kraft, three goldsmiths who would gladden the heart of a Cellini, a wood-carver, who is Peter Vischer restored to life, two sculptors who are really architectural sculptors as were the men who immortalized Chartres and Wells, a stone-cutter whose craft matches that of the masons of Venice and Rouen, a maker of stained glass who needs only an opportunity to restore some measure of the wonder of this lost art, a maker of ecclesiastical vestments whose needlework is that of the fifteenth century, a scribe who can do real missals and other illuminations as these once were done long ago.

"And not one of them has really enough to keep him busy or return him more than a living wage, while by default thousands of dollars' worth of work they could do consummately goes weekly to factories and similar places where it becomes simply so much plausible sham."



DETAIL AND PLANS, HOUSE, CLARENCE BONYNE, SO. ORANGE, N. J.

Davis, McGrath & Kiesling, Architects.

SOME REMARKS ON THE REAL PUBLIC VIEW
TOWARDS THE ARCHITECTURAL
PROFESSION AND BEAUX-ARTS
ARCHITECTURE.

HERBERT R. MAINZER.

FROM the very outset I wish to take the standpoint that the architects themselves are to blame for the majority of the evils they have to contend with and for some of the detrimental opinions that are universally held of the profession. We must frankly acknowledge that we have as many narrow-minded freaks in our ranks as the next profession, possibly one or two more. The object of these lines is to analyze the public view towards us, to show how it came about, and its possible remedies.

As in many other things architectural, let us turn to France for a moment. In that country the winner of the Grand Prix de Rome and his patron are each year invited to luncheon with the President of the Republic, and thus a mark of respect is shown which has its significance, and is recognized in the eyes of the public. Here one of our Presidents commits the deplorable oversight of not even mentioning the architect's name at the dedicatory address of a beautiful national monument entirely due to the latter's scholarly attainments. The lesson is obvious.

The opinion now and then expressed for and against the Ecole de Beaux Arts, its practices, teachings and results obtained, as well as the effect of its training upon our architecture, have been followed by all of us with considerable interest, if not actual amusement.

This instructive controversy, which has made many architects stop to consider whether they are really on the right track or not, cannot, however, seriously affect the public at large. To one who takes a commonsense view of the question both sides are partially right. Although fully upholding the remarkable system, and entirely in sympathy with the tuition of the Ecole, is it not a fact that Beaux-Arts men sometimes violate the first principles of this splendid training?

Did Laloux, Paulin or Guadet teach us to make shops look like palaces, railway-stations like baths, banks like mausoleums, etc., or did they instruct us to give expression to the character of the building?

What matters it to them whether the design is carried out in Gothic, Byzantine or Louis XVI, as long as the style is appropriately chosen, the purposes of the edifice apparent even to the casual observer, and one does not have to play hide-and-go-seek to find the entrance to the building.

The American mind is unusually receptive and adaptable, and likely to go to extremes for this very reason. The enthusiastic and well meaning youth flies to Paris, flies into the school, through it and back home, sometimes even with his A.D.G.F., all at express speed; he skims only along the surface and does not reach the depths. Commonsense methods have to retreat before this mad onslaught, and our ambitious young man often returns without having opened his eyes otherwise than to drink in the exhilarating sight of the splendidly rendered masterpieces of the "logistes" and their followers, only to overthrow the whole business when a really American problem stares him in the face.

What does the general public care or know about all this training? Surely little, except from the sentimental or amusing side; the result occupies it only. Granted that the

student has learned his lesson, let the general public now be educated up to it.

Can it be denied that the layman follows the intelligent architect like a little lamb? When a certain style or edifice becomes the fad, often exasperatingly repeated, then the architect only is responsible for making it so. As in music, the layman must be given credit for ultimately discovering the really beautiful, but the process is often a slow one; his eye as well as his ear becomes accustomed to a certain thing, and then only he knows what he wants. It is not his fault, but due to his schooling, or rather the lack of it, that when he wishes to build he will usually tell his architect of some monument or residence he has admired and desires to have reproduced and imitated. It is not going too far to state that the average man at home is less conversant with art in general than a fourteen-year-old of Vienna, Berlin or Rome, who discourses upon the clepsidra and tetrastyle intelligently enough to astonish even the initiated. A good medium is naturally desirable, but it is also proper that architectural styles are no longer "Greek" to the average American. The trouble lies right here in that this constant building about us, this very architecture none of us can get away from except during vacation in the wild woods, is as a sealed book, to both young and old in general. And this is not as it should be.

Hence comes the real public view of architects and their work in this country, which even to an optimist is a saddening spectacle in many respects. One is apt to ridicule what one does not comprehend. It is hardly necessary to recount the many indiscretions and absurdities constantly committed upon good taste, and upon this long suffering and mis-used profession. What we should do is to seek the remedy and then act accordingly.

Among all those more or less technical discussions in various professional journals, few, if any, reach the outside public; they are read as little as medical journals, and all seem to overlook the idea that to grumble and criticise is not the way to ameliorate conditions.

We have yet to see a clear and concise article that tends to enlighten the public what to do architecturally speaking, and how to think and judge for itself, in a paper that is actually read by the general public, and couched in terms comprehensible to it.

We are not even given a status on a par with other professions, and as we have only ourselves to blame for this fact, is not this the time to call a halt? Surely, if we will lead, and in the right manner, the public will follow us, our profession will be placed on a higher plane and regarded with the respect due it.

For instance, as a beginning, due reference to the architect of the buildings described or illustrated should never be omitted by the dailies, and articles should be written by competent persons only instead of the clap-trap-stuff we have to put up with at present. Secondly, if all architectural societies should unite to obtain the desired results; the layman would not consider us any more in the light of a trade union than he does now when the six per cent. rate is intimated.

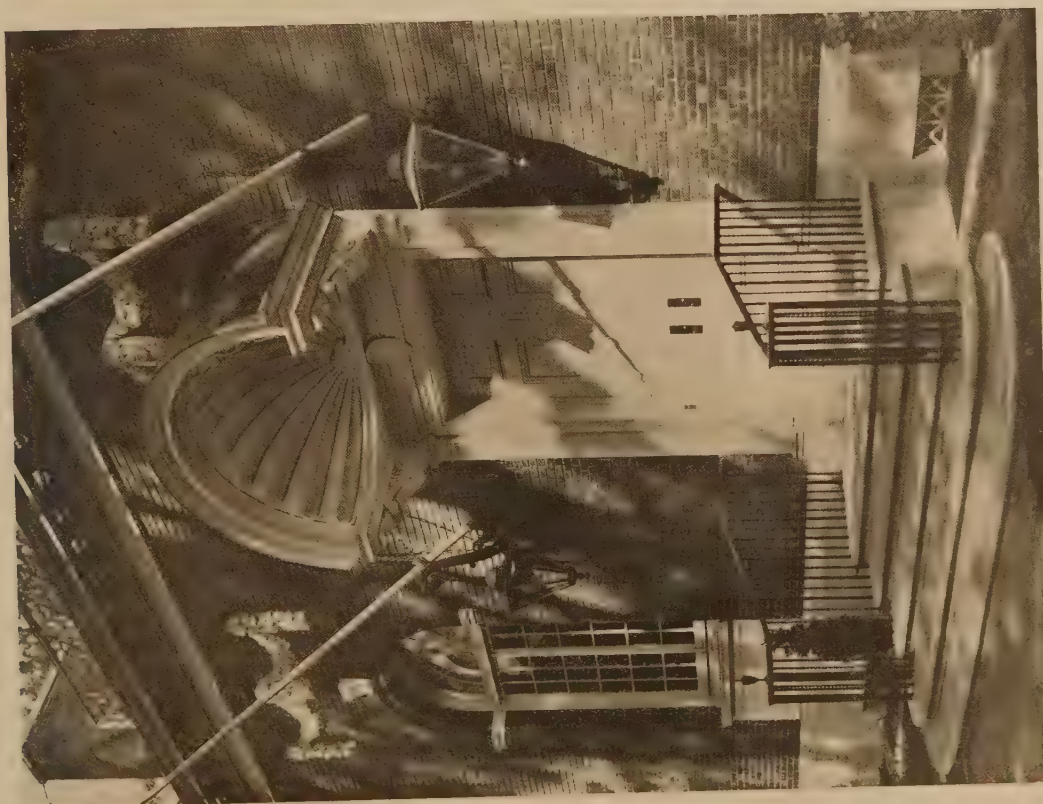
Instead of the furthering of extraordinary draughtsmanship, which only serves to make competitive drawings more beautiful and expensive, let the educational committees of our clubs go to the source and unite in their efforts to obtain interesting lantern-slide lectures for the public schools on

(Continued page 269)



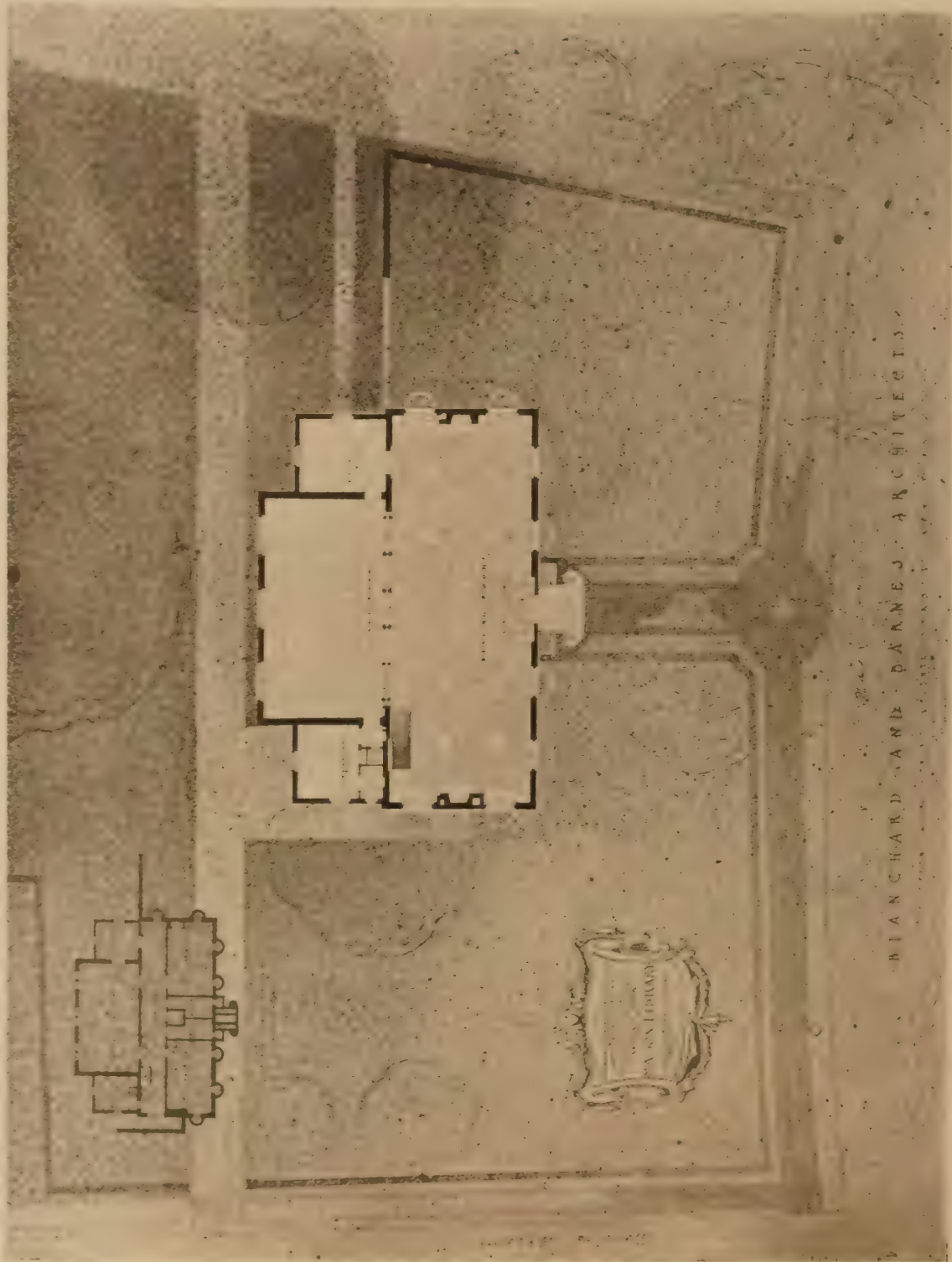
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INTERIOR, BOOTH THEATRE, NEW YORK.

Henry B. Herts, Architect.



TEA ROOM AND FOYER, BOOTH THEATRE, NEW YORK

Henry B. Herts, Architect

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the History of Art, hang good photographs of monuments of antiquity on the walls, and establish an elementary but interesting course on Architecture with compulsory free-hand drawing.

As in France, a building should bear the name of the architect modestly, but lastingly, carved and in full view. Then again all nefarious practices of unscrupulous prospective owner-builders should be discountenanced once for all, and if possible a stricter copyright or other protective law enacted for our drawings.

In regard to this, the more careful the sets of preliminary studies submitted may be the more tempting for the owner to photograph them, and then building from them without adequate compensation to the author. More often than not these studies are conveniently mislaid, and the impecunious young architect has either no redress or at best an unsatisfactory arrangement on his hands. Here again we only are to blame for allowing this state of affairs to exist, and all should unite against the practice.

The true conception of Beaux Arts architecture from the average business man's standpoint is a building covered with blazing cartouches and sprawling florid ornament, or a desperate attempt to create a "French stunt" impractically. This is analogous to Wagner's music dramas in which the brasses prevailed in the lay mind for a long time as the typical exemplification of his school (such as in the Tannhauser Bacchanale), whereas the more refined element (as in the Tristan Love-Duo) receives its merited recognition to-day. The layman is not the only one at fault; he gets his architectural Tannhauser served more frequently than his Tristan, but as he is taught to revere the latter, though he may not understand it, so at least can he be taught to respect the really great architectural works and their authors.

Furthermore, the architect is frequently overlooked regarding interiors and their decoration. If he has studied abroad he is at first compelled to overcome the prejudice that he cannot accomplish anything outside of the "Louis periods." Our genial spender goes straightway to the clever salesman decorator, who understands him well enough to saddle any articles upon him he desires to rid himself of. These are only a few of the much-needed simple reforms which, I believe, the profession should introduce.

In other words, the three main steps in the right direction lie in the artistic training of the young mind at school, in gradually bringing the public more in touch with the architectural profession, and by instantly correcting false impressions gained regarding the practice of architecture.

THE LAW OF ARCHITECT, OWNER AND CONTRACTOR.*

BY CLINTON H. BLAKE, JR.

(Of the New York Bar).

(Continued)

To qualify as a contractor within the meaning of the lien laws it is not necessary that one be the holder of a contract for the entire work under way or contemplated; for the owner may, as is entirely usual, enter into separate agreements, with a number of different contractors, covering different phases of the work. (*Duff v. Hoffmann*, 63 Pa. St. 192; *Schenck v. Uber*, 81 Pa. St. 31; *Pacific Mutual etc. Co. v. Fisher*, 106 Cal. 224). Under the more conservative statutes,

and in the earlier development of the lien law, the contractor was held to be not entitled to lien rights, for the reason that he could not be classed as a material man; but the recognition of the contractor's right to lien protection is now very generally recognized, and this in the very jurisdictions, where previously a more restrictive doctrine was adopted. (*Chapman v. Faith*, 18 Pa. Super. Ct. 578; *Lester v. Houston*, 101 N. Carolina, 605; *Bryan v. Whiteford*, 66 Ill. 33—for erecting and repairing; *Powell v. Nolan*, 27 Washington 318; *Haines v. Holland* (1898) Tenn. Ch. App. 48 S. W. 400; (compare also *Winder v. Caldwell* 14 How. U. S. 434), decided under U. S. Statute of 1833 and refusing lien).

In the case of the contractor, as in the case of the architect, the special provisions of the statutes in each jurisdiction must be considered, in determining whether the services performed are such as are recognized as the proper basis for a lien. In Illinois, work done in ornamenting a house comes within the statute, (*Drew v. Mason*, 81 Ill. 498). In California, under an act recognizing improvements as the basis of a lien, papering and decorating have been considered as constituting improvements (*La Grille v. Mallard*, 90 Cal. 373). In Massachusetts, the installing of a drying machine in a glue and chemical manufacturing plant has been construed as embodying merely slight changes, incidental to work on personal property, and as not therefore properly the basis of a lien (*Curnew v. Lee*, 143 Mass. 105).

It is almost self-evident that the contractor, if he is to place himself in a position where he may claim the protecao or advantage accruing from the statutory lien accorded him, must perform his contract, or show that he has been prevented from performing by the acts of the other party, or that the unperformed provisions of the contract have been waived. (*Woolf v. Schaefer*, 103 N. Y. A.D. 567; reversing 41 Misc. 640; *Mahon v. Guilfoyle*, 18 N. Y. Supp. 93; *Smith v. Ruggiero*, 52 A. D. 382; *Trust Co. v. Guigues*, 76 N. J. Eq. 495; *Smith v. Coe*, 2 Hilt (N.Y.) 365; affirmed 29 N. Y. 666; *May v. Menton*, 18 Misc. (N.Y.) 737; *Derr v. Kearney*, 46 Misc. 148; *Rochford v. Rochford*, 192 Mass. 231; *Pritzlaff, etc Co. v. Berghoefer*, 103 Wis. 359; *Bohem v. Siebury*, 141 Pa. St. 594; *Morrison Co. v. Williams*, 200 Mass. 406; *Burke v. Coyne*, 188 Mass. 401; *Frohlich v. Klein*, 160 Mich. 142; *Kane v. Stone Co.*, 39 Oh'o St. 1; *Malbon v. Birney*, 11 Wis. 107; *Brydon v. Lutes*, 9 Manitoba 463). That performance of the contract which is considered as necessary under this rule has been construed, as between the owner and principal contractor at least, to mean a substantial performance, and if the contract has been substantially performed, within the meaning of that term as interpreted by the courts, a lien may be enforced. (*Ruigle v. Wallis Iron Works*, 149 N. Y. 439; *D. A. Tompkins Co. v. Monticello, etc. Co.*, 137 Fed. 625; *Brandt v. City of New York*, 110 N. Y. A.D. 396, affirmed 186 N. Y. 599; *Felgenhauer v. Haas*, 123 A.D. N. Y. 75; *Nesbit v. Braker*, 104 A.D. (N.Y.) 393; *Sinclair v. Talmadge*, 35 Barb (N.Y.) 602; *Moore v. Dugan*, 179 Mass. 153; *Bergfors v. Caron*, 190 Mass. 168; *Burke v. Coyne*, 188 Mass. 401; *Sherry v. Madler*, 123 Wis. 621; *Kane v. Stone Co.*, 39 Ohio St. 1).

The rule has been well stated to be that

"If there has been no wilful departure from the terms of the contract, or omission in essential parts, and the laborer has honestly and faithfully performed the contract in all its material and substantial features, he will not be held to have forfeited his right to remuneration by reason of mere technical, inadvertent and unimportant omissions or defects. The law imposes no such liability upon and exacts no such penalties of the mechanic."

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*This series of articles began in the June (1913) number.



DETAILS, SGRAFFITO WORK, SHUBERT AND BOOTH THEATRES, NEW YORK.

Henry B. Herts, Architect.

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(Allen J. in *Sinclair v. Talmage*, 35 Barb. 602, at p. 604. See also on interpretation of substantial performance, *Glacious v. Black*, 50 N. Y. 145; *Otis Elevator Co. v. Dusenbury*, 47 Misc. 450; *Holl v. Long*, 34 Misc. 1; *Wollreich v. Fettretch*, 4 N. Y. Supp. 326.)

A delay by the contractor in carrying out the contract will not prevent him from enforcing his lien rights where the contract has been carried out, though late, but damages for the delay will be deducted from the contract price. (*Benner v. Schmidt*, 44 Ill. App. 304).

This rule is subject to the qualification that where time is stipulated to be of the essence of the contract, as it is called, that is to say, a fundamental term of the contract, a breach by the contractor of this fundamental provision, by tardiness in the completion of the work, will prevent him enforcing his rights as a lienor. (*D. A. Tompkins Co. v. Monticello Co.*, 137 Fed. 625).

NECESSITY OF ARCHITECT'S APPROVAL.

Where it is provided, as is so usually done, that the work of the contractor must be approved in due course by the architect, and that the certificate of the architect must be presented as a condition precedent to payment, the contractor can enforce no lien without either the presentation of the required certificate or proof of a proper excuse for not presenting it. (*Thomson-Starrett Co. v. Brooklyn Hts. Realty Co.*, 111 N. Y. A.D. 358; *Nesbit v. Braker*, 104 A.D. 393; *Highton v. Dessan*, 139 N. Y., 607, affirming 19 N. Y. Sup. 393; *Bloomington Hotel Co. v. Garthwait*, 227 Ill. 613). Where the plaintiff does not show the certificate specified and relies upon proof that the certificate has been demanded and its delivery by the architect refused, the burden of proof is upon the plaintiff to establish these facts by a preponderance of evidence in his favor and to establish in the same way, and as part of his case, the fact that the certificate was unreasonably withheld. (*Nesbit v. Braker*, 104 N. Y. A.D. 393).

It should be noted too, that in New York it has been held not only that where the production of the architect's certificate is a condition precedent to the right of payment there can be no recovery unless the certificate is produced or sufficient excuse shown for its non-production, but, in addition, that no payment can be secured under these circumstances unless there be an allegation in the complaint that the certificate has been secured or facts set forth showing that it has been unreasonably withheld and unless the pleading be sustained by proof upon the trial (*Weeks v. O'Brien*, 141 N. Y. 199; *L'Honmedieu v. Winthrop*, 59 A.D. (N.Y.) 192).

In the case of a municipal contract where it is stipulated that the certificate of approval of a department of the city is a condition precedent to final payment, and the claim is made that the certificate has been unreasonably withheld or refused, whether or not such withholding or refusal has been unreasonable or arbitrary is a question of fact, and should be left to the jury for determination (*N. Y. & N. H. Automatic Sprinkler Co. v. Andrews*, 173 N. Y. 25).

In Greater New York Sec. 421 of the charter provides among other things that:

"It shall be the duty of any borough president, or head of any department, having in charge any work, within five days after the acceptance of such work, to file with the comptroller a final certificate of the completion and acceptance thereof, signed by the chief engineer or head of his department. The filing of such certificate shall be presumptive evidence that such work has been completed according to contract."

Where the withholding of the certificate is pursuant to collusion between the architect and the owner, the lien will be

enforced (*McDonald v. Patterson & Co.*, 186 Ill. 381, affirming 84 Ill. Apps. 326). Inasmuch as the production of the certificate is a condition specified for the protection of the owner, the latter may waive the condition if he so chooses (*Hartley v. Murtha*, 5 N. Y. A.D. 408).

The certificate of the architect will support the lien claim where the contract specifies that the certificate shall be conclusive evidence of performance, but this rule is subject to the qualification that it is operative only in cases where the certificate is not only produced but is unimpeached. If it be provided for instance, that the works to be done and materials to be furnished shall be of a certain character and quality, and subject to acceptance or rejection by the architect, his acceptance will not alone be sufficient to support the lien claim, where it is shown that the work and materials are not of such character and quality as to comply substantially with the provisions of the contract. The mere fact that the contractor claiming the lien is a corporation, will ordinarily under the lien statutes make no difference, for the word "person" commonly and widely used in the statutes in describing those to whom liens may be awarded, has been construed by the courts, in the absence of other restrictive language, to include a corporation (*Gaskell v. Beard*, 58 Hun. 101; *Loudon v. Coleman*, 59 Ga. 653). The New York courts have held further that where a foreign corporation delivers material which is used in work in New York a lien may be maintained by the corporation notwithstanding its foreign origin (*N. Y. etc. Terra Cotta Co. v. Williams*, 102 N. Y. A.D. 1; and to same effect see *Cook v. Rome Brick Co.*, 98 Ala. 409; *Fagan v. Boyle etc. Co.*, 65 Texas 324; *Huttig Bros. etc. Co. v. Denny Hotel Co.*, 6 Wash. 122). In the event of the destruction of a building by fire where it has been provided that payment should be made upon completion and where the contract is not separable, but refers to the work as a whole, a lien may be maintained, provided the contract contains a provision that the risk of the destruction of the building by fire shall rest upon the owner (*Sontag v. Brennan*, 75 Ill. 279). In the absence of such a provision however, the lien will not be enforceable (*Wigton's Appeal*, 28 Pa. St. 161).

Where a lien has once attached, a mere change in ownership in the building during the progress of the work does not constitute a new commencement of building operations and does not affect the lien already attached (*Pennock v. Hooper*, 5 Rawle (Pa.) 290; *Gorden v. Torrey*, 15 N. J. Eq. 112).

In the event of the death of the owner, in some jurisdictions, the death operates to defeat the lien right (*Tubridy v. Wright*, 144 N. Y. 519; affirming 7 Misc. 403; *Crystal v. Flannely* 2 E.D. Smith 583; *Hoff's Appeal* 102 Pa. St. 218), while in others the enforcement of the lien may still be secured (*Robins v. Bunn*, 34 N. J. L. 322; *Holbrook v. Ives*, 44 Ohio St. 516; *Richardson v. Hickman*, 32 Ark. 406). Nor, as it has been held, is the lien affected by an assignment for the benefit of creditors where the assignment is subsequent to the filing of the lien (*Steger v. Arctic Refrigerating Co.*, 89 Tenn. 453); and in Ohio, even where the assignment precedes the filing of the lien (*Hart v. Globe Iron Works*, 37 Ohio St. 75—compare *Noyes v. Burton* 29 Barb. N. Y. 63).

THE LIEN OF THE SUB-CONTRACTOR.

The natural effect of the extension of the lien doctrine has been to protect the sub-contractor as well as the contractor, and in many cases the sub-contractor has been given a

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direct or subordinate lien by Statute. (*Pendleburg v. Meade*, 1 E. D. Smith 728; *Perry v. Patashinski*, 169 Mass. 351; *Merrigan v. English*, 9 Mon. 113; *Ballon v. Black*, 21 Neb. 131; *Berger v. Turnblad*, 98 Minn. 163; *Vaughan v. Ford*, 162 Mich. 37; *Green v. Williams*, 92 Tenn. 220; *Central Trust Co. v. Richmond etc. Co.* 68 Fed. 90; *Crane Co. v. Hanley etc. Co.*, 53 Mo. Appeals 540; *Seaman v. Biemann* 108 Wis. 365; *Hatch v. F. Fansher*, 15 R. I. 459, also holding (under Rhode Island statute) that a lien in favor of a sub-contractor for labor is inclusive of the labor of his employees, but not of materials furnished by him (*Knowlton v. Ellis*, 12 Phil. (Pa.) 396; *Huttig etc. Co. v. Denny Hotel Co.*, 6 Washington 122.) The Pennsylvania courts especially have led in the movement to give the sub-contractor a direct lien on the property irrespective of the rights of the contractor (*Linden Steel Co. v. Rough Run Manufacturing Co.*, 158 Pa. St. 238; *Willey v. Tapping*, 146 Pa. St. 427; *White v. Miller*, 18 Pa. St. 52;) but compare *Schroeder v. Galland*, 134 Pa. St. 277.

In New York State the courts have not adopted the idea of a direct lien for the sub-contractor, but have given him a lien based on the doctrine of, or, more exactly speaking, in the nature of subrogation, and require that the contractor himself shall be entitled to a lien and that in any event, there shall be monies due from the owner to the contractor to which the sub-contractor may be subrogated. (*LaPasta v. Weil*, 20 Misc. 554; reversing 20 Misc. 10; *Kirschner v. Mahoney*, 96 N. Y. Supp. 195; and see contrasting Pennsylvania doctrine of direct lien and New York doctrine of subrogation, *Prince v. Neal Millard Co.*, 124 Ga. 892; *Merrigan v. English*, 9 Mon. 113; *Hunter v. Truckee Lodge, etc.*, 14 Nev. 24).

Under the subrogation doctrine as exemplified in the New York cases, the owner is afforded a protection which is not given him under the doctrine of a direct lien for the sub-contractor as exemplified in the Pennsylvania cases. Thus, under the New York doctrine, where the principal contractor fails to complete, while the right of the sub-contractor to his lien is not affected, the extent to which the lien can be enforced is very materially affected, in that, under these circumstances, the New York Courts will allow the sub-contractor to enforce his lien to the extent merely of the amount due to the contractor from the owner at the time when the lien is filed, or at the time when the sub-contractor gives proper notice of his claim. (*Foshay v. Robinson*, 16 N. Y. Sup. 817; affirmed 137 N. Y. 134; and to same effect see *Wright v. Pohls*, 83 Wis. 560; compare *N. J. Steel etc. Co. v. Robinson*, 33 Misc. 361.)

Applying the New York doctrine to the usual provision in a building contract which provides that payment shall be made in installments, on account of the total amount, and that the balance of the stipulated price shall be paid upon completion, the effect is to prevent the sub-contractor from enforcing a lien against the balance retained under such a provision, in the event that the contractor fails to complete. (*Kelly v. Bloomingdale*, 19 N. Y. Supp. 126; affirmed, 139 N. Y. 343; *Brainard v. County of Kings*, 84 Hun. 29; affirmed, 155 N. Y. 538). If the owner, however, elects to come in and complete the work under a contract provision allowing him so to do, and does this, shortly before an installment is to fall due to the contractor, a sub-contractor or material man may enforce a lien to the extent of the amount of the installment so to become due, less such amount as

may be necessary to complete the work to the point when the installment would become due, less also such amount which may be necessary to make good defective work; and this rule holds true despite the fact that there may be nothing due to the contractor, on the completion of the building, by reason of his failure to complete (*Foshay v. Robinson*, 16 N. Y. Supp. 817; affirmed 137 N. Y. 134). Work done by the sub-contractor for the owner after the abandonment of the contract by the contractor, gives, of course, to the sub-contractor, the right to a lien for the full amount of the value of such work, this being a new undertaking as between himself and the owner and entirely separate from the work done theretofore under his contract with the main contractor (*Delray etc. Co. v. Keohone*, 132 Mich. 17). If the breach of the contract is on the part of the owner as distinguished from the contractor and the latter's failure to complete results from such a condition, the lien of the sub-contractor may be enforced to the extent of such part of the contract price as remains unpaid (*Person v. Stoll*, 72 N. Y. A. D. 141; affirmed 174 N. Y. 548).

There is a diversity of opinion among the courts of the different states as to the validity and effect of a provision in a building contract providing that the sub-contractor shall not acquire a lien, or providing that the contractor may not, without the owner's consent, sub-let his contract. In some jurisdictions it has been held that a lien, being purely statutory and provided solely by the decree of the Legislature, cannot be interfered with by the provisions of the building contract, and that the sub-contractor is accordingly entitled to his lien, irrespective of such covenant as the contractor may have made in this regard with the owner. (*Atlantic etc. Co. v. Donnelly*, 59 N. J. L. 48; see also *Huttig etc. Co. v. Denny Hotel Co.*, 6 Washington 122; and that a sub-contractor is entitled to his lien despite a provision that the contractor may not sub-let the contract and despite the fact that the owner has not given his consent to the making of the contract between the contractor and the sub-contractor, see *Wahlstrom v. Trulson*, 165 Mass. 429; *Perry v. Potashinski*, 169 Mass. 351), while in other jurisdictions, the courts considered that the sub-contractor is chargeable with notice of the provisions in the building contract and barred from his lien under such circumstances accordingly. (*Dersheimer v. Maloney*, 143 Pa. St. 532; *Schroeder v. Galland*, 134 Pa. St. 277; *Seaman v. Biemann*, 108 Wis. 365.)

It was a very general rule in the earlier stages of the development of the lien law, that the employee of a sub-contractor was not entitled to any lien rights (*Central Trust Co. v. Richmond, etc. Co.* 54 Fed. 723; *Harlan v. Rand*, 27 Pa. St. 511; *Culver v. Atwood*, 170 Ill. 432; *Morrison v. Whaley*, 16 R. I. 715; *Farmer v. St. Croix etc. Co.* 117 Wis. 76). The same rule was likewise applied to those furnishing materials (*Central Trust Co. v. Richmond etc. Co.*, 54 Fed. 723; *Wood v. Donaldson*, 17 Wend (N. Y.) 550; affirmed 22 Wend 395; *Heroy v. Hendricks*, 4 E. D. Smith, (N. Y.) 768; *Carlisle v. Knapp*, 51 N. J. L. 329; *Duff v. Hoffman*, 63 Pa. St. 191; *Harbeck v. Southwell*, 18 Wis. 418; *Stephens v. United RR. etc. Co.* 29 Ohio St. 227; (or furnishing labor to the sub-contractor (*Central Trust Co. v. Richmond etc. Co.*, 54 Fed. 723; *Wood v. Donaldson*, 17 Wend. (N. Y.) 550; affirmed 22 Wend. 395; *Cairo etc. Co. v. Watson*, 85 Ill. 531; *Vandenberg v. P. T. Walton etc. Co.*, 19 Okla. 169).

The stringency of these earlier decisions has been largely

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modified, however, by statutes and decisions substantially providing for liens in favor of those performing labor or furnishing materials for sub-contractors (*Vogel v. Luitwieler*, 52 Hun. (N. Y.) 184; *Brainard v. County of Kings*, 84 Hun. 290, affirmed 155 N. Y. 538; *Garrison v. Borio* 61 N. J. Eq. 236, 47 Atl. 1060; *Gardner etc. Co. v. N. Y. Central etc. Co.* 72 N. J. L. 257; distinguishing *Carlisle v. Knapp*, 51 N. J. L. 329; *Snyder v. N. Y. Central etc. Co.*, 72 N. J. L. 262; *Smith v. Neubaur*, 144 Ind. 95; *Barlow Bros. Co. v. Gaffney*, 76 Conn. 107; *Macomber v. Bigelow*, 126 Cal. 9; *Pere Marquette R. Co. v. Baertz*, 36 Ind. Apps. 408).

EFFECT AND NECESSITY OF FILING OR RECORDING CONTRACT.

There are provisions in a number of the states with reference to the filing or recording of the contract between the owner and the contractor, and while discussion of these might properly be included under the separate discussion to be given to the construction contract, their effect on the lien rights of the parties is such that it seems preferable that they be considered in the present connection. In some states these statutes have taken the form of providing that no lien can be predicated upon the contract unless the latter is in writing and recorded. (*McClellan v. Smith*, 11 Cush (Mass.) 238; *Conner v. Lewis*, 16 Me. 268; *Jaeger v. Bossieux*, 15 Gratt (Va.) 83; compare *Nolte v. His Creditors*, 6 Mart (N. S.) La. 168); while in California and in Louisiana, by a later decision and statute than that involved in the *Nolte* case cited, only contracts in excess of specified amounts need be so recorded (*Smith v. Bradbury*, 148 Cal. 41; *Whitla v. Taylor*, 6 La. Ann. 480). In California too, the rule has been modified, by a determination that a filing of a memorandum of the contract, embracing copies of substantially all topics required to be filed by statute, is sufficient (*Blinn Lumber Co. v. Walker*, 129 Cal. 62). In New Jersey a very different situation is found in that under the New Jersey Laws, in the event that the contract is in writing and is filed with the specifications with the clerk of the county where the work is done, at or before the time when the building is begun, the liability of the owner is thereby restricted to the contractor only, and does not extend to those performing services or labor or providing materials for the contractor (*English v. Warren*, 65 N. J. Eq. 30; *La Foucherie v. Knutzen*, 58 N. J. L. 234; *Freedman v. Sandknop*, 53 N. J. Eq. 243; *Weaver v. Atl. etc. Co.*, 57 N. J. Eq. 547; *Willets v. Earl*, 53 N. J. L. 270; *Budd v. Lucky*, 28 N. J. L. 484; *Ayres v. Revere*, 25 N. J. L. 474; compare *Glading v. Frick*, 88 Pa. St. 460). It should not be understood from this rule, however, that the sub-contractor or material man is helpless by reason thereof. It prevents him merely from enforcing a lien under the circumstances noted, but it does not prevent his securing a very definite degree of protection by the filing of what is commonly known as a "Stop Notice" which is, in substance, a notice to the owner of his claim. The effect of this is to place the owner in a position where the payment by him of additional monies to the contractor will be at his peril in view of the notice which he has received. As a practical matter this course will usually result in the owner's refusing to pay to the contractor such balance as may be due him and withholding it from him, subject to proper proof of the claims of those sub-contractors from whom notices have been received.

Formerly in New Jersey the filing of specifications or copies thereof with the contract was not required in every instance. It would appear, however, (*LaFoucherie v. Knut-*

zen, 58 N. J. L. 234), that this former rule dispensing with filing of the specifications was limited largely to those cases where all the work was to be done, and the materials furnished by, the contractor, himself one of the parties to the agreement, and that, even formerly, the necessity existed of filing these specifications in the event that the contract referred to the specifications for the details of the work to be done or was itself so incomplete that an examination of the specifications became absolutely necessary for a proper understanding of the arrangements which had been made (*English v. Warren*, 65 N. J. Eq. 30; *Weaver v. Atl. Roofing Co.*, 57 N. J. Eq. 547). The filing of the specifications or a duplicate or copy thereof, according to whether the original contract or a duplicate or copy thereof is filed, is, under the present statutes, however, mandatory if the owner is to be protected. (*English v. Warren*, 65 N. J. Eq. 30.)

In concluding the present discussion of mechanics' liens it should be again noted, and always borne in mind, that in every instance the only safe course to follow is to refer directly to the statutes of the state in which the question arises. Only in this way can a definite and adequate understanding be reached of what rule is to be applied under the special circumstances existing, and only so can the various elements of the extent and time of accrual of the lien, the property affected thereby, and the rights as to priority of respective lienors, be properly determined. Thus in New York, section 13 of the lien law gives to those who have performed labor and furnished materials, priority over the general creditors of an insolvent owner or contractor, and this section in connection with sections 25 and 56 thereof provides for the priority of day laborers over contractors and sub-contractors irrespective of when their liens are filed, and of a material man over contractors and sub-contractors. (See *Herman et al v. City of New York*, 130 N. Y. A. D. 531; *Hedden Const. Co. v. Proctor etc. Co.*, 62 Misc. (N. Y.) 129). In New York too, laborers and material men are given priority, among themselves, in accordance with the date of the filing of their respective liens.

The priority of lienors in other jurisdictions will naturally vary in greater or less extent in accordance with the peculiar doctrines or conditions which there exist, and it will not be amiss to note yet again the fact that in every instance, the decision on the various phases of the lien law, are based upon the special provisions of the particular statutes involved, and that only by a careful examination of the statutes in force when and where a case arises can the exact, as distinguished from the general, rights of the parties be properly weighed and determined.

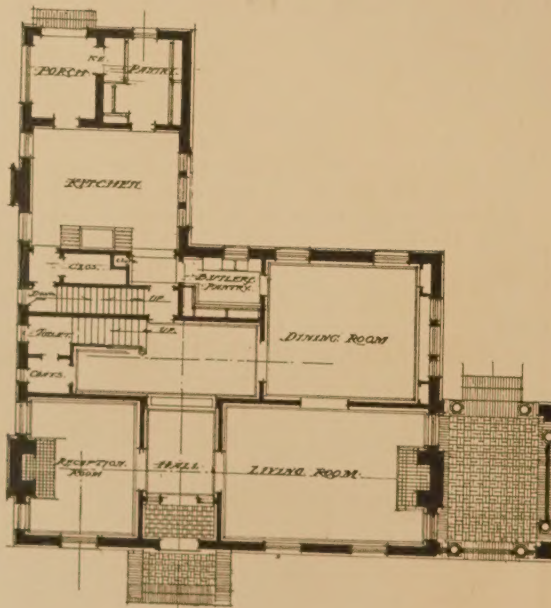
THE BUILDING CONTRACT.

There is naturally nothing of more importance as affecting the mutual rights and liabilities of the owner, the builder, and, to a certain extent the architect, than the Construction Contract, in that it is to the contract that the courts will look in determining and interpreting the special rights and liabilities of the parties.

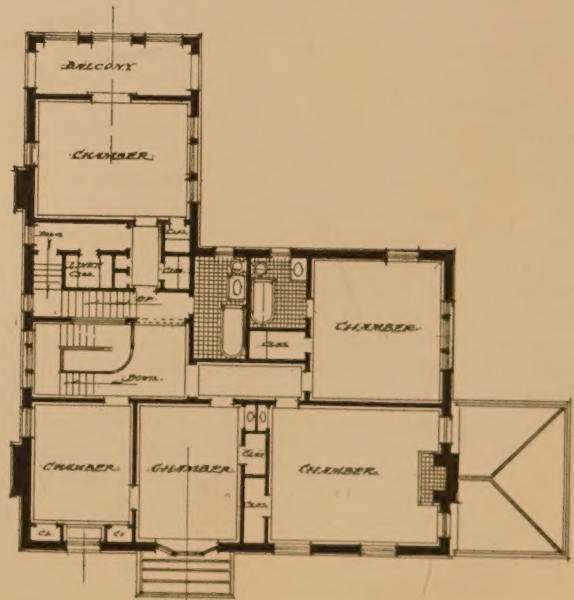
O'Keefe v. St. Francis's Church, 59 Conn. 551.

While in the absence of a specific statute, it is not necessary that the contract, if it is to be performed within a year, shall be in writing (*Champlain Construction Co. v. O'Brien*, 117 Federal 271), yet the custom of reducing the terms of the understanding to written form has now become so well-nigh universal, and the desirability of a contract in definite written form is so apparent, that in referring to the contract

(Continued page 277)



FIRST FLOOR PLAN
SCALE $\frac{1}{8}$ "=1'-0"



SECOND FLOOR PLAN
SCALE $\frac{1}{8}$ "=1'-0"

(Continued from page 275)

hereafter it may be assumed, unless it is otherwise definitely indicated, that where the contract is mentioned, a written contract is referred to.

REQUISITES IN GENERAL.

It is one of the prime requisites of any contract that a consideration must be present, and the building contract is no exception to the rule (*Majory v. Shubert*, 82 (N. Y.) A. D. 633), and it is essential also that there be present in the contract the element of mutuality—the obligation upon the builder to do the work and upon the employer to make payment for the work that is done (*Durkin v. City of New York*, 49 Misc. (N. Y.) 114). A mere memorandum of prices, signed by the parties, cannot be held to be a binding contract in the absence of an undertaking by the parties to perform the agreement (*Greve v. Ganer*, 36 Wisconsin 369). To these more fundamental requisites of a valid contract must be added the elements that the building contract must be so phrased as to allow the intent of the parties to be deduced therefrom with a reasonable degree of certainty. In a comparatively recent case before the Supreme Court of the United States, it appeared that there was a variance between the provisions of the contract and the specifications, and the court, in its opinion by Chief Justice White, referring to the irreconcilable provisions of the contract and specifications, said:

"It is evident that there was a conflict so irreconcilable between the essential provisions of the assumed contract as to render it impossible to enforce it as an agreement between the parties * * * under the circumstances, therefore, the court erred in treating the contract as a valid agreement."

Analogous to the foregoing rule is the rule that where the specifications, in exact accordance with which it is covenanted the building must be erected, are so indefinite and so erroneously drawn as to make impossible their proper interpretation or the erection of a building of any known dimensions, the contract will not be enforced (*Lyle v. Jackson Co.*, 23 Arkansas 63, and see *Turney v. Bridgeport*, 55 Conn. 412).

Other elements of the valid contract which should be specially noted are: That the contract must not contemplate a building in its very character capable of being used for an illegal purpose (*Spurgeon v. MacElwain*, 6 Ohio 442), and must also be so drawn as to comply with the provisions of the building codes and regulations in force where the building is to be erected (*Burger v. Koelsch*, 77 Hun. (N. Y.) 44; *Eastern etc. Metal Co. v. Webb Granite etc. Co.*, 195 Mass. 356; but see *Morse v. Maurer*, 35 Pa., Super. Ct. 196, holding that where the contract has been performed in accordance with its terms, the owner may not defend on the ground that additional expense will be required to make the work conform with the building regulations; and see (*Gerard Life Insurance Co. v. Cooper*, 162 U. S. 529; *Diken v. Heger*, 73 N. Y., A. D. 453).

(To be continued)

THE MODERN RUG OF CLASSIC DESIGN.

"ONE source of most of the bad designs in modern rugs and, I may as well add, in many other art crafts," said the late Sir Caspar Purdon Clarke, director of the Victoria and Albert Museum at South Kensington, and afterwards of the Metropolitan Museum in New York City, "is owing to a mistaken attempt to produce something new and original."

(Continued page 278)



This room was photographed at night solely by the indirect illumination of the Eye Comfort Lighting System with which it is lighted.

Eye Comfort Lighting Adds Beauty to the Home

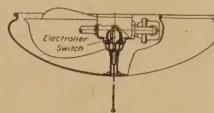
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(Continued from page 277)

None of the patterns we so greatly admire in old Oriental rugs were original designs; they were but slow developments of various types of surface decoration, where the forms, originally symbolic, were regarded with superstitious respect and the colorings followed rules which were seldom deviated from. The designer's whole effort was therefore narrowed into perfecting forms he already understood, in attending to niceties of shading and in refining his predecessor's work, and this going on from age to age, resulted in a perfection which could not be obtained by other means."

On this subject Sir Caspar was probably better qualified to speak than anyone else. His wide acquaintance with all the textile products and processes of both Orient and Occident enabled him to base his conclusions on observed facts rather than on artistic prejudice and self interest.

Sir Caspar believed that originality is the result, not of conscious effort toward novelty, but of an intelligent development of old forms to suit new conditions; that the difference between the old and the new is a difference arising out of changes in environment; that new styles are a growth and not a creation.

How much of the charm and beauty of antiques is due to the mellowing influences of age it is not our purpose to discuss here, but we do wish to emphasize the fact that the antiques as they are now possess qualities that make them preferred above all others. If the supply of antiques was sufficient even at present prices, the demand for fine modern pieces would be less insistent.

But things are as they are. It is difficult to get fine antique rugs at all, much less get them in size, coloration and design, suited for the particular apartment. If perchance the colors are acceptable, the design is likely to be of an unsuitable character; and if the design and colors are appropriate, the shape is wrong or the size is a little too large or too small, usually the latter.

There has, to be sure, been considerable effort on the part of several firms controlling looms in the Orient to reproduce the beauties of the past, and some of these reproductions, particularly those of Kerman and Chinese rugs, have been admirable. But only a few of them have been true to the ancient spirit and at the same time perfect in weave and gentle enough in tone to harmonize with the interiors now being built by our leading architects and decorators.

In Shahrastan rugs the solution of the problem has been approached from a new point of view, from the point of view presented so delightfully by Sir Caspar Purdon Clarke at the beginning of this article. The effort has been concentrated not only on the reproduction of ancient designs, but of ancient designs in ancient texture—in the texture of the fifteenth and sixteenth centuries, when were practiced in both Oriental rugs and Occidental tapestries refinements of coloration only recently suspected and analyzed. At the same time the strong coloration of the ancient designs as they looked when new has been simplified. The number of colors has been reduced—but usually without reducing the number of tones—and dominant golds and grays and ambers have subdued the contrasts in the same way that light and air subdue them through the centuries—but without the wear and tear that have sent so many precious pieces to the repairer.

The designs of these rugs are uniformly classic, based on and developed from the most famous ones of old—those now treasured in museums and private collections. And the lustre is as rich and deep as of the choicest ancient pieces, and the finest furs.



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